

# CONSTRUCTION LOAN ESCROW AGREEMENT

ESCROW AGREEMENT NO:

DATE:

TO: **Vinopal Title and Abstract, LLC**, Escrow Agent:

At the request of \_\_\_\_\_ (hereinafter referred to as Owner/Borrower), and  
, (hereinafter referred to as Lender) will from time to time deposit a total of \$ \_\_\_\_\_ (as set forth in Schedule A) of a  
\$ \_\_\_\_\_ loan secured by a mortgage on the premises more particularly described in File No.

Commonly known as:

You are authorized and directed to disburse the funds deposited hereunder pursuant to the statements of amounts due approved by the Owner/Borrower.

The Inspector/Architect is \_\_\_\_\_

The General Contractor is \_\_\_\_\_

There will be monthly disbursements, which are to be made in accordance with the terms and conditions of this escrow as hereinafter set forth.

I. Prior to the first disbursement of funds hereunder, the following are requirements of this escrow agreement, to-wit:

A. The Escrow Agent shall be furnished with:

1. An approval by the Lender of the conditions of title to the premiums described above;
2. An approval by the Lender for loan disbursement purposes of the Owner's statement and the Contractor's statement, which are provided at IA3 and IA4 below;
3. A sworn Owner's statement disclosing the various contracts entered into by the Owner and setting forth the names of the contractors, their addresses, work or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments and balances due;
4. A sworn Contractor's statement setting forth in detail all contractors and material suppliers with whom he has contracted, their addresses, work or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments and balances due.

B. The Escrow Agent shall be prepared to furnish to the Lender an ALTA Loan Policy with construction lien coverage, covering the requested disbursement, or if such a policy has been previously issued, Escrow Agent shall be prepared to furnish **Vinopal Title and Abstract, LLC** Endorsements, as attached hereto, covering the requested disbursement.

With respect to the conditions of title, the liability of Escrow Agent in making any disbursements in reliance upon the title evidence referred to above shall not extend to the determination of whether or not it is acceptable to Lender, the furnishing of funds for disbursement being considered the acceptance of title as so reported.

II. Prior to each disbursement of funds hereunder, it is a requirement of this escrow agreement that the Escrow Agent be furnished:

- A. A sworn Contractor's statement setting forth all contractors and materialmen with whom he has contracted, amounts of contracts, amounts paid to date, amounts of current payments and balance due;
- B. An approval by the Owner/Borrower of the requested disbursement. If any new contracts have been let by the owner and not disclosed to Escrow Agent or upon the request of the Escrow Agent, Owner/Borrower shall furnish a current sworn Owner's Statement in the form required at IA3;
- C. A report or a certification by the Architect certifying that work has been completed and materials are in place as indicated by the request for payment of the General Contractor;
- D. Sufficient funds to cover the requested disbursements and to pay for extras or change orders for which waivers have not been deposited and for which funds have not previously been deposited;
- E. Sufficient funds to cover unpaid title and escrow charges;
- F. Statements, waivers, affidavits, supporting waivers and releases of liens, as required by and satisfactory to **Vinopal Title and Abstract, LLC**
- G. All required documentation for the final draw request must be submitted to Escrow Agent prior to any disbursement of the final draw.

III. All disbursements for construction purposes will be made by the Escrow Agent directly to \_\_\_\_\_. In the event that the General Contractor or any subcontractor jointly authorize the Escrow Agent to pay any funds due one to the other, the Escrow Agent may comply with such authorization. However, it is the intention of the parties named herein and signatory hereto that no person not a party signatory to this escrow shall have the right to look to the Escrow Agent for any disbursement hereunder under a third party beneficiary theory or otherwise, and that the Escrow Agent owes no duty to any such third party to make any disbursement.

IV. As the Escrow Agent makes a partial disbursement of mortgage proceeds hereunder, it will furnish the Lender the following: **Vinopal Title and Abstract, LLC** Endorsements, as foresaid, covering each requested disbursement.

V. If at any time during the course of construction the total of the unpaid disclosed cost of construction as indicated by the column totals on the General Contractor's sworn statement exceeds the amount of the undisbursed mortgage proceeds as calculated by the subtracting the total amount of liability taken on the endorsements from the face amount of the mortgage, the Escrow Agent in its sole discretion need not make further disbursements under the terms of this escrow agreement until the Owner/Borrower has deposited in this escrow trust the sum necessary to make the available funds equal to the unpaid disclosed cost of construction, or unless specifically directed to make such further disbursements by the Lender. Also, if Escrow Agent discovers a misstatement in an affidavit furnished by the General Contractor or Owner/Borrower, it may stop

disbursement until the misstatement has been corrected. **Vinopal Title and Abstract, LLC** has no liability hereunder to the Owner/Borrower relating to protection against construction lien claims unless **Vinopal Title and Abstract, LLC** agrees in writing to give such coverage.

- VI. The functions and duties assumed by **Vinopal Title and Abstract, LLC** include only those described in this agreement, and the Escrow Agent is not obligated to act except in accordance with the terms and conditions of this escrow agreement. **Vinopal Title and Abstract, LLC** does not insure that the building will be completed, nor does it insure that the building, when completed, will be in accordance with plans and specifications, nor that sufficient funds will be available for completion, nor does it make the certification of the Inspector/Architect its own, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement.
- VII. Bill all title escrow charges to owner.
- VIII. General Conditions: At any time prior to its commencement of disbursement of funds hereunder, the Escrow Agent reserves the right to decline commencement of disbursements of funds, if **Vinopal Title and Abstract, LLC** declines any risk offered for insurance hereunder, whereupon Escrow Agent shall return to the Lender any documents in its possession relating to such loan and the funds received by it. Commencement of disbursement makes this agreement effective as to all funds received and disbursed on the construction in question.

Where, after the first disbursement, a further title search reveals a subsequently arising exception over which **Vinopal Title and Abstract, LLC** is unwilling to insure, Escrow Agent will notify the Lender and may discontinue disbursement until the exception has been disposed of to the satisfaction of the Lender. A construction lien claim over which **Vinopal Title and Abstract, LLC** is required to insure hereunder does not warrant a discontinuance of disbursement.

Escrow Agent has no liability for loss caused by an error in the certification furnished it hereunder as to work in place.

Escrow Agent shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds deposited in the United States mail shall not be construed as being in custody of Escrow Trustee.

In the event of default as declared by the Lender and/or foreclosure by the Lender, Escrow Agent shall have the right to discontinue further disbursements under this agreement.

The undersigned acknowledge and agree that no interest will accrue to the undersigned on any funds held in escrow by the Escrow Agent pursuant to this agreement and that, in addition to the fees and charges payable to the Escrow Agent for its services, the Escrow Agent may receive ancillary benefits from the use of the funds held in escrow.

The undersigned agrees that this agreement shall not be construed as, nor is it the intent of any of the parties hereto to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than **Vinopal Title and Abstract, LLC**, (Lender) and (Owner/Borrower) under a third party beneficiary theory or otherwise.

The undersigned agrees that the improvement referred to in the escrow agreement will be constructed and completed in strict accordance with the plans and specifications and the building contract. The undersigned also concurs in the above escrow instructions signed by the Owner/Borrower and the Lender or their representatives

For Lender: \_\_\_\_\_

For the Owner/Borrower: \_\_\_\_\_

Accepted: \_\_\_\_\_

*Vinopal Title and Abstract, LLC* Escrow Agent